

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

2007 DEC 10 PM 1:05

CLERK *m. J. [Signature]*
SO. DIST. OF GA.

LEROY THOMAS,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

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CIVIL ACTION NO.: CV506-070

ORDER

After an independent review of the record, the Court concurs with the Magistrate Judge's Report and Recommendation, to which Plaintiff has filed Objections and Defendant has filed a response. In his Objections, Plaintiff contends that the Magistrate Judge erred in finding that substantial evidence supports the ALJ's determination of no disability. Plaintiff reasserts his claim that the ALJ erroneously denied him disability benefits based solely on a "non-reviewing physician's statement from years before." (Doc. No. 31, p. 3).

Plaintiff's Objections are without merit. As the Magistrate Judge discussed, opinions of non-examining physicians, when taken alone and contrary to a treating physician's opinion, are entitled to little weight and cannot constitute substantial evidence upon review. See Swindle v. Sullivan, 914 F. 2d 222, 226, n.3 (11th Cir. 1990). In the case *sub judice*, however, the ALJ's findings were based on the entirety of

the record, which included the non-examining source but also included other objective medical evidence which was in line with the non-examining source opinion. Accordingly, the Report and Recommendation is adopted as the opinion of this Court. The decision of the Commissioner is hereby **AFFIRMED**.

SO ORDERED, this 10th day of DECEMBER, 2007.



WILLIAM T. MOORE, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA